

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

NOLAN RUDOLPH, Derivatively on Behalf
of CYBERONICS, INC., §
§

Plaintiff,

V.

ROBERT P. CUMMINS, PAMELA
WESTBROOK, MICHAEL A. CHENEY,
DAVID S. WISE, ANTHONY L. COELHO,
KEVIN S. MOORE, REESE S. TERRY,
STANLEY H. APPEL, ALAN J. OLSEN,
GUY C. JACKSON, ALAN TOTAH, and
MICHAEL STRAUSS,

CASE NO. 4:06-CV-2671

Defendants,

and

CYBERONICS, INC., a Delaware corporation,

Nominal Defendant.

FINAL JUDGMENT

The Court has considered the agreed motion of plaintiff Nolan Rudolph, suing derivatively on behalf of Cyberonics, Inc, and nominal defendant Cyberonics, Inc. for entry of judgment and is of the opinion the motion should be GRANTED.

The Court adopts the findings of the Court in *In re Cyberonics, Inc. Derivative Litigation*, Cause No. 2006-46403 (“*Cyberonics Derivative Litigation*”), filed in the District Court of Harris County, Texas, 189th Judicial District (the “Texas State Court”) that the form and method of notice provided to Cyberonics, Inc. stockholders were sufficient to meet the requirements of Article 5.14F of the Texas Business Corporation Act and due process, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and

entities entitled thereto. The Court further finds and directs that the form and method of notice met the requirements of Federal Rule of Civil Procedure 23.1.

It is therefore ORDERED that this case is hereby dismissed on the merits and with prejudice, with each party to bear his, her, or its own costs.

All other relief not expressly granted in this Final Judgment is denied.

SO ORDERED.

Signed this 17th day of March, 2008.

Melinda Harmon
MELINDA HARMON
UNITED STATES DISTRICT JUDGE